

General Information Letter: Disability income is not deductible unless paid under a qualified retirement plan or a government disability plan.

October 21, 1999

Dear:

This is in response to your letter dated October 12, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

The above taxpayer has been seeking refund from the State of Illinois in the amount of \$273.00 since February 19, 1999.

One problem is with the interpretation of Long Term Disability.

This should be on a 1099, but xxxx does not handle theirs that way. Instead they issue a W-2.

Had this been someone working for the State, it would have been on the 1099, no questions asked.

This is not third party sick pay as it has no Medicare or Social Security taken out of it.

I am enclosing copies for your edification.

Response

Base income for purposes of the Illinois Income Tax Act (IITA) is federal adjusted gross income modified by particular additions and subtractions listed in the statute (IITA §203(a)(1) and (2)). Although your letter is somewhat unclear about the details, it appears that the income amount in question is a retirement or disability payment from a private company. The only possible subtraction that might apply is contained in IITA §203(a)(2)(F):

(2) Modifications. The adjusted gross income referred to in paragraph (1) shall be modified by . . . deducting . . . the following amounts:

(F) An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto;

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Since your letter makes reference to this as a long-term disability payment and the employer is not a "governmental agency or unit", it is clear from the statute that the payment is not one that can be subtracted from adjusted gross income before calculating the Illinois income tax.

If I have made any incorrect assumptions herein, please feel free to write me with the additional facts so that advice can be drafted in that light.

As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax